

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE  
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

OCT 24 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2008-0110-PR
	)	2 CA-CR 2008-0111-PR
	)	2 CA-CR 2008-0112-PR
Respondent,	)	2 CA-CR 2008-0113-PR
	)	(Consolidated)
v.	)	DEPARTMENT A
	)	
LAWRENCE DAVID DIAZ,	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
Petitioner.	)	Rule 111, Rules of
	)	the Supreme Court

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PETITIONS FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause Nos. CR200301731, CR200301801, CR200301855, and CR200400184

Honorable Stephen F. McCarville, Judge

REVIEW GRANTED; RELIEF DENIED

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Lawrence David Diaz

Florence  
In Propria Persona

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PELANDER, Chief Judge.

¶1 In these consolidated petitions for review, Lawrence Diaz challenges the trial court's orders dismissing the second notice of post-conviction relief that he filed pursuant to Rule 32, Ariz. R. Crim. P., in each of four causes and denying his motions for

reconsideration of the orders of dismissal. Absent a clear abuse by the trial court of its discretion to determine whether a defendant is entitled to relief, we will not disturb the court's ruling. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no such abuse here.

¶2 Pursuant to plea agreements, Diaz was convicted of the following offenses: second-degree burglary, in CR200301731; theft of a means of transportation, in CR200301855; weapons misconduct, in CR200301801; and forgery, in CR200400184. He was sentenced to aggravated, concurrent prison terms in each cause, the longest of which were nine-year terms for two of the offenses. In each case he sought post-conviction relief. After appointed counsel filed a notice stating she had found no meritorious claims to assert, Diaz failed to file supplemental, pro se petitions, and the initial proceedings were dismissed. Soon afterward, Diaz filed a second notice of post-conviction relief in each case, asserting claims of ineffective assistance of counsel and challenging his sentences based on the trial court's purportedly erroneous reliance on multiple prior convictions to enhance and aggravate the prison terms. Diaz filed petitions for post-conviction relief as well. In each case, the trial court dismissed the notices, finding Diaz had failed to comply with Rule 32.2(b), Ariz. R. Crim. P., because he had stated neither a specific exception to the rule of preclusion that was applicable nor why he had failed to raise the claims in the previous post-conviction proceeding. The court also noted that Diaz had stipulated in the plea agreements that he would be sentenced to aggravated prison terms. In these petitions for

review, Diaz asserts claims of ineffective assistance of counsel, including the claim that trial counsel should have objected to the enhancement of his sentences with prior felony convictions. He also asserts ineffective assistance by the “attorney doing his appeal” and contends “that required an evidentiary hearing where counsel failed to raise the issue of the trial court’s imposition of consecutive sentencing in this case.”

¶3 The trial court did not abuse its discretion when it found Diaz’s claims precluded. Diaz had filed a previous notice of post-conviction relief in each of the causes, thereby commencing initial post-conviction proceedings; any claims he did not raise but could have raised in the first proceeding were waived, including claims of ineffective assistance of counsel. *State v. Swoopes*, 216 Ariz. 390, ¶ 23, 166 P.3d 945, 952-53 (App. 2007). As the trial court’s orders suggest, with respect to any claims that arguably fell within subsections (d), (e), (f), (g), or (h) of Rule 32.1, Diaz was required to establish his failure to raise them in the initial post-conviction proceedings was through no fault of his own. *See* Ariz. R. Crim. P. 32.2. This he did not do. Moreover, the claims do not appear to fall within any of those subsections of the rule. We note, in addition, that claims of ineffective assistance of counsel that do not relate directly to the validity of the plea agreements, such as Diaz’s claim that counsel failed “to investigate the charges against him,” were waived by Diaz’s entry of his pleas. *See State v. Hamilton*, 142 Ariz. 91, 94, 688 P.2d 983, 986 (1984) (“It is well established that entry of a valid guilty plea forecloses a defendant from raising nonjurisdictional defects.”); *State v. Quick*, 177 Ariz. 314, 316, 868

P.2d 327, 329 (App. 1993) (same). Finally, Diaz is raising in his petitions for review certain claims he did not first present to the trial court; we will not address such claims. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see generally* Ariz. R. Crim. P. 32.9(c)(1).

¶4 The petitions for review are granted but, for the reasons stated, relief is denied.

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JOHN PELANDER, Chief Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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PHILIP G. ESPINOSA, Judge